

**Town of Milford
Zoning Board of Adjustment Minutes
November 21, 2013
Alan Tang
Case #2013-23
Variance**

Present: Fletcher Seagroves, Chairman
Zach Tripp
Kevin Taylor
Michael Thornton
Joan Dargie

Katherine Bauer – Board of Selectmen’s representative

Absent: Laura Horning
Bob Pichette
Paul Taylor

Secretary: Peg Ouellette

The applicant, Alan Tang, along with Lorden S.C., LLC, owner of Map 44 Lot 6, 614 Nashua St, in the Commercial district, is requesting a Variance from Article VII, Section 7.06:E.2 to install a 36 SF wall sign, where a maximum of 10 SF or 50% of the storefront’s linear measurement is allowed.

MINUTES APPROVED AND SIGNED ON FEBRUARY 6, 2014.

Fletcher Seagroves, Chairman, read the notice of hearing into the record and informed all of the procedures. The list of abutters was read. Applicants Alan Tang and Morgan Cram were present. He then invited the applicant forward to present their case.

M. Cram stated that they are putting a Subway (sandwich shop) in Lorden Plaza and cannot have a sign by the road because that sign is full. They want a larger sign on the structure to attract passing traffic. Only 10 SF is allowed by ordinance but Subway doesn't make a sign that small and that would be difficult to see from the road. They would like a 36 SF wall sign.

F. Seagroves asked for questions from the Board.

Z. Tripp asked if the overall height would be 44 1/8 inches.

M. Cram said yes.

Z. Tripp asked whether it would protrude above the roofline.

M. Cram said no.

Z. Tripp inquired which unit.

M. Cram clarified that it was #25, the one next to the US Cellular unit, with the four windows.

J. Dargie asked the size of the US Cellular sign.

M. Thornton said he had measured it to be about 18 linear ft. The Toadstool sign next to it is 56 SF but Toadstool has three units. He also measured the other Subway sign which is 23 linear ft and they have an 18 SF sign, which says that Subway does do a sign 18 SF. Why is that not sufficient?

M. Cram said because they can't put sign next to the road. Cars passing by could not see a sign that small from the road.

M. Thornton said he could see the one at the other Subway extremely well as well as Radio Shack and others. He asked for any reason it had to be that much bigger than those.

M. Cram said it didn't need to be that big, but had to be bigger than 10 SF. Bigger is better for attracting customers.

F. Seagroves said they are asking for 16ft long by 3 ft. higher?

M. Cram said yes.

M. Thornton said that would be only two feet shorter than the storefront.

F. Seagroves said the storefront was 20 ft.

M. Thornton said he didn't know which unit – he measured one and it was 18 ft.

Z. Tripp asked if this was just letters. Would the bottom be level with the soffit of the roof?

M. Cram said yes to both.

J. Dargie asked if it was a lit sign.

M. Cram said it was.

F. Seagroves said he went by a Subway in Manchester and that had a box sign instead of just letters. This one is almost like Toadstool's sign.

M. Cram said almost exactly and they are not doing a box sign.

M. Thornton said the Toadstool sign does protrude above the roof 2.5 ft. This would be 1/2 ft taller.

J. Dargie asked if there was any reason not to do the same as Toadstool.

M. Cram said no. Their second application is for 2 1/2 ft.

M. Thornton noted that the proportion of the sign, at almost the full length of the storefront, is much larger than Toadstool which is a much larger store. He knows the applicant would say a sign is a sign, but they were asking for a variance 3.6 times the normal size.

Z. Tripp said he drives by there twice a day and had plenty of time to look at it. It is a unique situation – the distance from the road, a very busy intersection. Driving through there he is not looking off to the side to see what it up there. It is important to get that attention. Trying to picture a 36 SF version filling 70 percent of that and taller than Toadstool, as a reference, it looked, in his mind, a little big for that plaza.

There being no other questions from the Board, the Chair opened the meeting for public comment. Katherine Bauer, 247 North River Rd, said part of the applicants' argument was that there is no room on the monument sign near the road. She wondered why, looking at the photo of the monument, that didn't account for all the businesses there. In other words, if there was more room on the sign, all the businesses would be there. She asked whether there were any hopes or plans for a bigger sign.

M. Cram said not by the landlord.

J. Dargie said she thought that sign is set up for the other side [of the plaza]-Shaw's, Rite-Aid, Dollar Store.

K. Bauer asked if all the businesses on the other side are on the sign.

M. Cram wasn't sure.

K. Bauer said that was a good point, that there was no monument sign for this side of the plaza.

M. Cram said that was correct.

K. Bauer said, as a citizen, she had no problem with the Subway sign because that section was harder to see from the road and it was probably a good idea to have a larger sign, but it was up to the Board to decide.

K. Taylor agreed with K. Bauer that this section of the plaza was a little harder to see. He would not have a problem with a bigger sign.

F. Seagroves closed the public portion of the meeting and asked the applicant to go through the criteria for a variance.

1. Granting the variance would not be contrary to the public interest because:

This variance would not be contrary to public interest because it would not infringe on the public's health, safety, morals or general welfare rights. It is also an opportunity to bring in more economic opportunities to the town of Milford in terms of more jobs, more money and more customers.

2. If the Variance were granted, the spirit of the ordinance would be observed because:

As per 7.06.1 the purpose and intent of the ordinance include:

- Encourages the effective use of signs for communication.
A larger sign is easier to see for the motorists on the road, and thus is more effective as communication.
- Retain the town's ability to attract and encourage economic development and growth.
A well-marked location is easier to find for visitors, increasing the business in the plaza and increasing the amount of jobs we can offer.
- Improve pedestrian and vehicle traffic safety.
A larger sign that is easier to be seen from further away gives drivers time to make an informed decision while driving. Smaller signs not seen until very close to the turn gives the driver less time to think about changing lanes and turning into the plaza.

3. Granting the variance would do substantial justice because:

The other businesses in the plaza have substantially larger signs, a small Subway sign would be lost to the other larger signs surrounding it. We are unable to attract drivers by using a sign by the road because the large sign by the road for the plaza is already full. Subway also does not make any sign that is less than or equal to 10 square feet.

4. Granting the variance would not diminish the value of surrounding properties because:

This is a shopping plaza where are already several larger signs present. A larger sign would offer better exposure to the plaza and bring in more economic opportunities to the surrounding businesses.

5. Denial of the variance would result in unnecessary hardship.

A). “Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:

i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

On top of having no road signage, there are also no Subway signs made that are 10 square feet or less in size.

ii) and; The proposed use is a reasonable one because:

The sign will be professionally installed and better visibility of the shop sign means better opportunity for the business to prosper. The proposed sign also does not conflict with any of the prohibited signs in section 7.06.4.

B) If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:

An inability to advertise to passing traffic due to only using a small sign would decrease sales and decrease our ability to bring more jobs and money to the town of Milford. Also the cost and time commitment of not only getting a custom (less than 10 SF) Subway sign made, but also approved by Subway for use would stop us from opening the business at all.

C). Notwithstanding paragraph (B) above, a Variance may be granted without finding a hardship arising from the terms of the Zoning Ordinance when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provide that:

The variance requested under this paragraph shall be in harmony with the general purpose and intent of the Zoning Ordinance because it complements the purpose and intent of the sign ordinance without harming the public or property around it. It allows for competitive advertising, which will help to improve our ability to increase economic abilities in Lorden Plaza.

F. Seagroves asked if the sign would be furnished by Subway, who want them to put their signs up.

M. Cram said yes.

Z. Tripp asked if what they want is similar to the requirement of the franchise.

M. Cram said pretty much. They could try to do a custom sign, but to get it past the legal authorities is quite a time and money commitment.

F. Seagroves referred to the four different signs (sign examples provided in packet) asking if those were the four different variations.

M. Cram said yes.

M. Thornton felt that sticking up higher than the Toadstool sign and much higher than the roof might be awkward.

F. Seagroves said they can only go 12 ft up.

J. Dargie said if you proportionally allow Toadstool to go as large, it will get out of control; it would mean the bigger shop you have, the more shops you rent the larger the signs can be.

M. Thornton felt the same height as Toadstool would be more beneficial.

J. Dargie agreed it would look better.

F. Seagroves pointed out they have those four sizes.

J. Dargie said the same height as Toadstool would be the 30 inch.

F. Seagroves said that would fall into line with possible changes to the zoning; but they could not use that now. They need to go by zoning as it is currently.

J. Dargie noted the second application and asked whether they had to go through the second request.

Z. Tripp said they should go through the questions on this one and make a motion and vote.

F. Seagroves said they have to answer all questions and then vote to accept or deny. If they deny, they go through the next case.

K. Taylor asked, if they amended it to go with 24 SF on this case would they still have to go to the second case.

Z. Tripp asked if he meant adding special condition to this one.

K. Taylor said yes, go with the 24 inches - the 29 x 7 x 16, would they have to go to the second hearing?

Z. Tripp felt it would be cleaner to disapprove this case and then go to the second.

F. Seagroves asked the Board if they had any additional questions or comments. There were none.

1. Would granting the variance not be contrary to the public interest?

Z. Tripp said yes. It would do no harm to the public or health, safety or general welfare of the public.

K. Taylor said yes.

M. Thornton said yes.

J. Dargie said yes.

F. Seagroves said yes.

2. Could the variance be granted without violating the spirit of the ordinance?

K. Taylor said yes, it could.

M. Thornton said he was a little torn; it is 3.6 times the size. Even the other sign is 3.375 times the "allowed." If they keep going larger, what is the purpose of having an ordinance at all? He voted no.

Z. Tripp said he was also torn. The Ordinance tries to reduce visual clutter by encouraging effective use of signs. Even though this location warrants a sign larger than allowed, his subjective opinion was that this seemed a little large and bulky. As Mike mentioned, the Toadstool sign is currently the tallest in the plaza at approximately 67% of the storefront. Also, there is the possibility of a tenant going into the old Movie Scene and the unit next to Toadstool who might want larger and larger signs. He voted no.

J. Dargie said no and agreed with Zach. The sign is too large. If only a foot away from either end, you will get two other businesses on the other sides all taking advantage of what Subway has.

F. Seagroves commented that this is a variance and they are not setting a precedent; each case is taken on its own, but he was also voting no. As Mike said, they don't want a sign war in town. He would like to see them all the same. Maybe the next sign down (in size) would fit in with Toadstool and they would all look similar and everybody has the same chance of being seen.

3. Would granting the variance do substantial justice?

Z. Tripp said since there are reasonable alternatives the gain to the public being less visual clutter, there probably would not be substantial justice.

J. Dargie agreed.

K. Taylor said no.

M. Thornton said no.

F. Seagroves agreed with Zach; the public may gain by having all signs the same.

4. Could the variance be granted without diminishing the value of abutting property?

K. Taylor said he wanted to say no because it could end up with a sign war there.

M. Thornton believed they are better off with a shorter sign because if they cover almost the entire storefront and the next unit does the same, there would be so much clutter and no differentiation. He voted no.

Z. Tripp said yes. They can grant without diminishing the value of surrounding properties; they are all commercial. Having this size sign does not reduce resale value.

J. Dargie said no. If granted at that size, it could diminish value but if next businesses on either side followed the ordinance they would have a tiny sign which could potentially harm those businesses.

F. Seagroves said he didn't think it would diminish the value of abutting property. He didn't think it would stop them from selling the property if they wanted and getting a fair price. They discussed sign size, but here they are talking about diminishing value. The property itself will stay the same.

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Z Tripp said what distinguishes this property is the distance from the road and not having room on the monument sign. It is a busy intersection and drivers are looking at the lights and traffic. Heading east, going onto Rte 101, you are looking for that ramp. Coming into town, it is awkward to look toward the plaza. It is uniquely situated and it is difficult to get the attention of the drivers. They can grant it because the restriction on the property to a 10 SF sign was not necessary to give full effect and purpose of the ordinance. The use is a reasonable one because he believed the Ordinance as written interfered with reasonable use of that property with a 10 SF sign at this location, but the proposed sign seemed large, so it was probably not a reasonable request. He would say no to the second half of the section. The applicant could not reasonably use in strict conformance with the Ordinance, that being 10 SF, so there is unnecessary hardship under Section B.

K. Taylor agreed; under Section A, no but under Section B, yes on hardship. The Ordinance says 10 SF which would be a hardship.

M. Thornton thought granting the variance to some degree was called for. He felt the proposed use was a reasonable one for a larger sign, but not this large. He didn't believe unnecessary hardship would be deemed to exist. There is no fair and substantial relationship between public purpose and Ordinance.

J. Dargie said no, only in that she felt it was another size of sign that could be allowed. Not granting this size would not result in unnecessary hardship, since there is another option.

F. Seagroves agreed. It is hardship if they go by specifications of the Ordinance of 50 % of the linear feet, but he agreed 36 SF was too much. If going with 10 SF, as Zach said, it is a busy

intersection with four lanes, two turning to go to the bypass and two heading into town. 10 SF was too small; but 36 was too much.

F. Seagroves asked if there were any additional comments; he called for a vote.

1. Would granting the variance not be contrary to the public interest?

Z. Tripp – yes; J. Dargie – yes; M. Thornton – yes; K. Taylor – yes; F. Seagroves – yes

2. Could the variance be granted without violating the spirit of the ordinance?

K. Taylor – yes; Z. Tripp – no; J. Dargie – no; M. Thornton – no; F. Seagroves – no

3. Would granting the variance do substantial justice?

M. Thornton – no; J. Dargie – no; Z. Tripp – no; K. Taylor – no; F. Seagroves – no

4. Could the variance be granted without diminishing the value of abutting property?

Z. Tripp – yes; M. Thornton – no, because it would increase clutter & decrease amount of attention-getting for each store; J. Dargie – no; K. Taylor – no; F. Seagroves – no

5. Would denial of the variance result in unnecessary hardship taking the following into consideration:

A) i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

ii. The proposed use is a reasonable one.

B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

K. Taylor – yes; Z. Tripp – yes per Subsection B; J. Dargie – no; M. Thornton – no;

F. Seagroves – no

F. Seagroves asked for a motion.

K. Taylor made the motion to deny the application.

M. Thornton seconded the motion.

Final Vote

Z. Tripp – yes; J. Dargie – yes; M. Thornton – yes; K. Taylor – yes; F. Seagroves – yes.

Case #2013-23 was denied by unanimous vote.

F. Seagroves reminded the applicant of the thirty (30) day appeal period.